



INDUSTRY CIRCULAR

**DEPARTMENT OF
THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 76-21

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UNEXPLAINED SHORTAGES OF BEER

Brewers and Others Concerned:

This circular is issued to inform you of our position concerning tax liability on unexplained shortages of beer in bottles, cans, or kegs.

We have from time to time issued statements and established guidelines setting forth what actions might be taken under certain conditions where shortages of beer (as distinguished from losses) are reported after the beer has been packaged. However, it has not always been possible to avoid misinterpretations or to achieve a uniform application of such guidelines. We recognize that where the accuracy of a system is dependent on machines and people some errors occur, even when a brewer exercises the utmost caution and control. It is expected, however, that each brewer will devise and maintain an effective recordkeeping system and an effective system of security controls designed to prevent unauthorized and unrecorded removals.

The regulations in 27 CFR 245.225 provide that the brewer shall maintain, at his brewery, daily records which will accurately and clearly reflect, by quantity, operations relating to the production and disposition of beer and cereal beverage, including shortages and overages disclosed by physical inventories.

The regulations in 27 CFR 245.226 provide that a summary of brewery operations shall be reported on ATF Form 103 (5130.9), Brewer's Monthly Report of Operations. This form has been revised to require that all brewers who report inventory shortages of packaged beer on lines 30(c) and 30(e) of the monthly report must fully explain the shortages in the "Remarks" section of the report (Part IV); or explain the shortages in a separate signed statement attached to the report.

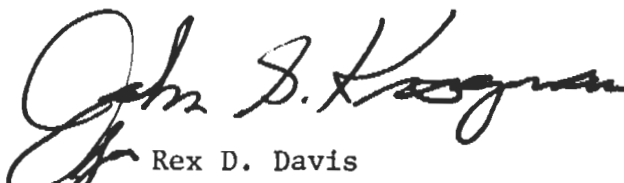
Under these regulations, brewers are required to keep detailed records of their operations and to give complete summaries thereof in their periodic reports. Our objective

with respect to the verification of the recordkeeping system of tax-producing plants is to verify the removal of taxable products and to assure collection of the exact amount of tax due on such removals; no more and no less. Achievement of this objective includes checking the records of production, losses, inventory, removals, etc., to determine whether the proprietor maintains adequate record controls over each phase of his operation to assure proper accounting. We recognize that even though a brewer has a seemingly adequate control system, overages and shortages may occur. Where shortages are found by inspectors or are reported in brewers' reports, brewers will be given an opportunity to explain how the shortages occurred, and a uniform yet a fair approach will be employed in making a determination as to whether the tax on such shortages will be assessed. In making such determination, the adequacy of the brewer's recordkeeping procedures and of his security systems becomes a prime factor since any such shortage is a persuasive indication that taxable removals may have occurred without payment of tax and that an assessment to collect the tax may be justified.

Under this policy, when a shortage of packaged beer is reported by a brewer, or is disclosed by an examination of records or by other means, such brewer shall be held liable for the tax involved. The brewer will, however, be given every reasonable opportunity to explain and account for any particular shortage. Only after a complete evaluation of all facts and conditions relative to such shortages (including any offsetting gains in prior or subsequent accounting periods), and only after an evaluation of the brewer's recordkeeping and security control systems, will an assessment be made or the brewer be requested to include an appropriate adjustment in his next tax return. Brewers are reminded, however, that repetitive instances of apparent shortages occurring as a result of inaccurate or inadequate records may result in action to impose or to compromise the penalties provided by law and regulations for failure to keep proper records.

The policy set forth above shall be effective January 1, 1977. Beginning with the month of January 1977, operations shall be reported on revised ATF Form 103 (5130.9) (8-76).

Inquiries regarding this circular should refer to its number and be addressed to the appropriate regional director, Bureau of Alcohol, Tobacco and Firearms.


Rex D. Davis
Director